

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA**

MARY SHARON WALKER,

Plaintiff,

Civil Action No: 7:12CV00564

vs.

NEW ENGLAND COMPOUNDING
PHARMACY, INC., D/B/A/ NEW
ENGLAND COMPOUNDING
CENTER,

and

IMAGE GUIDED PAIN
MANAGEMENT, P.C., D/B/A
INSIGHT IMAGING ROANOKE,

Defendants.

**PLAINTIFF’S RESPONSE TO DEFENDANT IMAGE GUIDED PAIN MANAGEMENT,
P.C. D/B/A INSIGHT IMAGING ROANOKE’S MOTION TO DISMISS FOR LACK OF
SUBJECT MATTER JURISDICTION**

Defendant Image Guided Pain Management, P.C., D/B/A Insight Imaging, has filed a motion to dismiss on the grounds that this Court lacks subject matter jurisdiction over this matter. Defendant’s motion essentially argues that subject matter jurisdiction is lacking because Plaintiff’s claims do not raise any substantive issues of federal law. Defendant further relies on the opinion of Judge Saylor in the District of Massachusetts in *Carey v. New England Compounding Pharmacy, Inc.*, in which Judge Saylor concluded that the resolution of the plaintiff’s claims “does not require the resolution of a substantial question of federal law.”

Plaintiff does not disagree with Defendant’s core analysis, which is nearly identical to the arguments previously set forth in Plaintiff’s Motion to Remand to Roanoke Circuit Court, and

which are hereby incorporated by reference. However, to the extent this Court lacks subject matter jurisdiction, an outright dismissal, which is what Defendant appears to be seeking, would be improper. Rather, the appropriate remedy would be to remand this case back to the Roanoke Circuit Court where it was initially filed.

Respectfully Submitted by:

/s/ Jeffrey Travers

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CERTIFICATE OF SERVICE

I hereby certify that on March 13, 2013, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system and that electronic notice and service will be completed through the ECF system to all counsel of record.

/s/ Jeffrey Travers, Esq.

Jeffrey Travers, Esq. VSB # 77409